

REMARKS

By this amendment, Applicants have amended claims 1, 3-7, 11, 13, and 17, and canceled claims 2, 12, 14, 16, and 18-20, without prejudice. As a result, claims 1, 3-11, 13, 15, and 17 remain pending in this application. These amendments are being made to facilitate early allowance of the presently claimed subject matter. Applicants do not acquiesce in the correctness of the objections and rejections and reserve the right to pursue the full scope of the subject matter of the original claims, or claims that are potentially broader in scope, in the current and/or a related patent application. Reconsideration in view of the following remarks is respectfully requested.

In the Final Office Action, the Office rejects claims 11-16 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. In particular, the Office alleges that the claimed system could be reasonably interpreted as software *per se*. Previously, Applicants have amended claim 11 to expressly include at least one computing device. However, the Office alleges that “the computing device could be implemented in software...” Final Office Action, p. 2. Applicants respectfully submit that such a holding is not supported by Applicants’ specification or the term “computing device” as it is widely known and used in the art. Regardless, Applicants have amended claim 11 to expressly state that the system includes a plurality of software servers and an image server. As a result, Applicants respectfully request withdrawal of the rejection of claims 11, 13, and 15 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter.

Further, the Office rejects claims 1-20 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,990,666 (Hirschfeld). Applicants respectfully request withdrawal of these rejections for the following reasons.

For example, with respect to claim 1, the Office fails, *inter alia*, to show that Hirschfeld teaches or suggests determining a demand for a service as in claim 1. In support of its rejection, the Office cites col. 2, lines 43-61 of Hirschfeld and states that “demand by users for a server providing a service is an important factor in allocation resources.” However, the Office confuses demand for a server, which is a physical resource and is discussed in Hirschfeld, with demand for a service. As previously argued by Applicants, “service” is a term of art that refers to the functionality derived from a particular software program. Additionally, as previously argued by Applicants, a system, such as the server in Hirschfeld, can provide numerous services, perform other functionality, and/or the like, each of which can impact the demand for a particular resource, such as the server in Hirschfeld. As a result, demand for the service does not necessarily directly correlate to the demand for the resource as implied by the Office. Further, a particular service may not require a substantial amount of a particular resource. In this case, the resource (e.g., a server in Hirschfeld) may experience a low demand while the demand for the service is high.

In response to Applicants’ arguments, the Office alleges “that a resource can also refer to functionality derived from a particular software program.” Final Office Action, p. 7. In order to facilitate early allowance of the presently claimed subject matter, Applicants have amended claim 1 to expressly state that the service is one of a plurality of services being provided using a plurality of software servers, that the plurality of services share the resources of the system, and that the attributes include at least one attribute of a resource of the system, the resource comprising one of: a software server, the image server, a network, or a storage system. Applicants respectfully submit that these amendments clearly distinguish the services and resources of claim 1.

In light of the above, Applicants respectfully request withdrawal of the rejections of claim 1 and claims 3-6, which depend therefrom as allegedly being unpatentable over Hirschfeld.

With respect to claim 7, in order to facilitate early allowance of the presently claimed subject matter, Applicants have amended claim 7 to expressly state that the service is one of a plurality of services being provided using a plurality of software servers, and that the plurality of services share the resources of the system. Applicants respectfully submit that these amendments clearly distinguish the services and resources of claim 7. As a result, Applicants respectfully request withdrawal of the rejections of claim 7 and claims 8-10, which depend therefrom, as allegedly being obvious in view of Hirschfeld.

With respect to claims 11 and 17, Applicants note that the Office relies on its interpretation of Hirschfeld as allegedly teaching all the features of claim 1. To this extent, Applicants hereby incorporate the arguments presented above for claim 1. As a result, Applicants request withdrawal of the rejections of claims 11 and claims 13 and 15, which depend therefrom, and claim 17 as allegedly being unpatentable over Hirschfeld.

Applicants submit that each of the pending claims is patentable for one or more additional unique features. To this extent, Applicants do not acquiesce to the Office's interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicants do not acquiesce to the Office's combinations and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Office's combinations and modifications have not been separately addressed herein for brevity. However, Applicants reserve the right to present such arguments in a later response should one be necessary and/or in

a related patent application, either of which may seek to obtain protection for claims of a potentially broader scope.

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,

/John LaBatt/

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